

Application No. : 10/782,680
Filed : February 18, 2004

REMARKS

Claims 12-24 and 34-60 were pending in the application. By this paper, Applicant has amended Claims 12, 21, 34, 37, and 46, and added new Claim 61-64. Accordingly, Claims 12-24 and 34-64 are presented for examination herein.

Request-for-Continued Examination (RCE)

Applicant submits concurrently herewith a request for continued examination for the above-identified application.

§103 Rejections

1. Per page 2 of the Office Action, Claims 12-21, 34-46 and 50-60 stand rejected under 35 U.S.C. §103(a) as being unpatentable over by *"The Use of Dynamically Reconfigurable Protocol Stacks for Streaming Multimedia to Mobile Devices"* by Curran, et al. (2002 IEEE; hereinafter referred to as "Curran"), in view of Patki, et al. (U.S. Patent No. 6,944,185; hereinafter referred to as "Patki"). In response thereto, Applicant provides the following remarks.

Claim 12 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 12 as being unpatentable over Curran in view of Patki.

Applicant notes that *"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination."* *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990). {emphasis in original} See MPEP 2143.01.

Applicant further notes that *"The proper inquiry is 'whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.'"* *In re Fulton*, 391 F.3d 1195 at 1200-01 (Fed. Cir. 2004). {emphasis in original} See MPEP 2143.01.

Applicant submits that there is no motivation to combine the teachings of Curran and Patki. Specifically, Curran discloses an API set (protocol setup) which sits on top of an operating system and on which developing applications are built (Curran at page 948). These

applications are configured to control movement of a device between heterogeneous networks, block third party traffic, and transcode. Thus, even if one were to assume, *arguendo*, that Patki discloses enabling a user to control functions of the playback of content (a point which Applicant does not necessarily concede), there is simply no suggestion of the desirability of controlling the playback in the Curran reference. Specifically, Curran is concerned with protocol for the configuration of client devices, and is in no way concerned with the playback of content delivered to the devices.

Accordingly, there is nothing in the prior art to suggest the desirability, and thus the obviousness, of making the combination of Curran and Patki.

However, in order to further distinguish the invention of Claim 12 over the prior art, Applicant has by this paper amended Claim 12 to recite (i) assembling the first, second and third components into one or more applications configured to utilize the components, and (ii) providing the one or more applications to the second node via at least one multiplex transport stream. Support for these amendments may be found at *inter alia*, FIG. 3, steps 302-306, page 22, lines 23-30 and page 23, lines 17-27 of Applicant's specification as filed.

Applicant notes that "*To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.*" *In re Royka*, 490 F.2d 981 (CCPA 1974). See MPEP 2143.03.

Applicant respectfully submits that none of the references cited by the Examiner, including Curran and/or Patki, teaches or suggests assembling the first, second, and third components into one or more applications configured to utilize the components. Specifically, Curran merely discloses the Chameleon middleware. The Examiner contends at e.g., page 3 of the Office Action that the Chameleon middleware performs the functions of the first and second components. Assuming *arguendo*, the Examiner's contention to be correct (a point which Applicant does not necessarily concede), nowhere does Curran teach or suggest assembling these components and a third component into one or more applications configured to utilize the components.

Furthermore, nowhere does Curran teach or suggest providing the Chameleon middleware to the second node via at least one multiplex transport stream, as now recited in Claim 12. Rather, per Curran FIG. 2, the Chameleon middleware is run on a home agent.

Applicant further notes that “*If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.*” *In re Ratti*, 270 F.2d 810 (CCPA 1959). See MPEP §2143.01. Applicant submits that it would be
5 contrary to the basic operating principle of Curran to transmit the Chameleon middleware to the second node (i.e., to enable the receiving devices to have the functionality of the Chameleon middleware), because Curran is specifically aimed at providing a mechanism for enabling the various client devices to subscribe to different channels at the client device’s choice (see bottom of Col. 2 of page 948 of Curran), and move between different multicast or media groups based
10 on the media type supported. By placing the Chameleon middleware of Curran on the receivers (i.e., clients), the ability to create the “channels” that other clients could subscribe to would be completely frustrated, thereby (i) changing the basic principle of Curran, and (ii) further rendering the resulting implementation unfit for its intended purpose (see MPEP 2143.01: “*If
15 proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.*” *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984)).

Therefore, Applicant submits that Claim 12 as amended herein distinguishes over the art of record, and thus is not rendered obvious thereby.

20 **Claim 21** – Applicant respectfully traverses the Examiner’s §103 rejection of Claim 21 as being unpatentable over Curran in view of Patki. Specifically, Applicant submits that there is nothing in the prior art to suggest the desirability, and thus the obviousness, of making the combination of Curran and Patki. See MPEP 2143.01, discussed *supra*.

However, in order to more clearly distinguish the invention of Claim 21, Applicant has
25 by this paper amended Claim 21 to recite limitations relating to the first, second, and third software components being selected from among sets of components developed by a headend entity of the content based network and provided to the CPE, the CPE being configured to assemble the first, second, and third software components into at least one application via at least an editor application. Support for this amendment may be found at, *inter alia*, page 23,
30 lines 5-16 of Applicant’s specification as filed.

Applicant respectfully submits that neither Patki nor Curran teaches or suggests the
aforementioned limitations. The Examiner contends that Curran discloses the first and second
components by the Chameleon middleware. However, even if one assumes, *arguendo*, the
Examiner's contention to be correct, nowhere does Curran disclose the Chameleon middleware
5 being selected from among sets of components developed by a headend entity of the network.
That is to say, even if the Chameleon middleware is developed by a headend entity of the
network (a point which Applicant does not concede), there is simply no teaching of the selection
of the components comprising the Chameleon middleware from among sets of components.

Furthermore, no where does Curran teach or suggest providing the Chameleon
10 middleware to the CPE, the CPE being configured to assemble the first, second, and third
software components into at least one application via at least one editor application. Rather, the
Chameleon middleware is merely adapted to provide media content to the devices and enable
the devices to move between media groups (see e.g., page 948-949). Nowhere does Curran
disclose the individual devices (i) receiving the individual components of, or (ii) assembling
15 the components of, the Chameleon middleware.

Applicant also notes that it would be contrary to the basic operating principle of Curran
(and render it unfit for its intended purpose) to provide the functionality (i.e., components) of
the Chameleon middleware to the devices in violation of MPEP§2143.01 (discussed *supra*).

Therefore, Applicant respectfully submits that Claim 21 as amended herein distinguishes
20 over the prior art cited by the Examiner and thus is not rendered unpatentable thereby.

Claim 34 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 34
as being unpatentable over Curran in view of Patki.

Applicant notes that the Examiner has failed to indicate where either reference teaches
25 or suggests "*specifying to said CPE a channel on which on-demand content may be accessed by
said CPE*" as recited in Claim 34.

Applicant submits that neither reference teaches or suggests specifying to the CPE a
channel on which on-demand content may be accessed by the CPE. Specifically, Curran merely
discloses a Chameleon middleware which communicates between the home agent and a
30 multimedia server (see e.g., FIG. 2). Curran does not disclose the Chameleon communicating to

the CPE the channel on which on-demand content may be accessed. To the contrary, Curran appears to leave the decision on which “channel” to choose entirely up to the client device based on e.g., quality (see Col. 2, bottom of page 948 to Col. 1, top of page 949).

Further, Patki merely discloses a depacketization module, which depacketizes data streams (see e.g., Abstract). Nowhere does Patki seemingly disclose specifying to the CPE a channel on which on-demand content may be accessed.

However, in order to further distinguish the invention of Claim 34 over the prior art, Applicant has by this paper amended Claim 34 to recite limitations relating to (i) each component of the set of first components, the set of second components, and the set of third components being associated with different multiple systems operator (MSO) environments, and (ii) in response to a request for a particular application within a given MSO network, assembling and delivering individual ones of the set of first components, the set of second components, and the set of third components associated with the given MSO. Support for these amendments may be found at, *inter alia*, page 23, lines 5-10 of Applicant’s specification as filed.

Applicant respectfully submits that neither Patki nor Curran teaches or suggests the aforementioned limitations. Specifically, the Examiner asserts that Curran discloses a Chameleon middleware having the functions of the first and second components, and that Patki discloses functionality of the third component. However, even if one assumes the Examiner’s assertion to be correct, nowhere does Curran and/or Patki disclose these components comprising sets of components each associated with different MSO environments. Rather, the cited references both merely disclose a single MSO environment.

Further, neither reference discloses in response to a request for a particular application in a given MSO network assembling and delivering individual ones of the first set, second set and third set of components associated with the given MSO.

Accordingly, Claim 34 as amended herein is patentably distinguishable over the prior art cited by the Examiner, and respectfully not rendered obvious thereby.

Claim 37 – By this paper, Applicant has amended Claim 37 to recite (i) a pre-existing and network-specific protocol having at least one extension thereof, the third module being

adapted to understand the extension, and (ii) enabling the content to be presented according to one or more requested functional modes available to the network-specific protocol based at least in part on the extension. Support for these amendments may be found at, *inter alia*, page 15, lines 14-20 of Applicant's specification as filed.

5 Applicant respectfully submits that neither Patki nor Curran teaches or suggests the aforementioned limitations. Specifically, Applicant submits that neither reference teaches or suggests a pre-existing and network-specific protocol having at least one extension thereof. Further, even if one assumes the Examiner's argument that Patki discloses a third module, Patki simply does not disclose the third module being adapted to understand an extension.

10 Applicant further submits that Patki fails to teach or suggest the third module enabling the content to be presented according to one or more requested functional modes available to the network-specific protocol based at least in part on the extension.

Therefore, Applicant respectfully submits that Claim 37 as amended herein distinguishes over the prior art cited by the Examiner and thus is not rendered unpatentable thereby.

15 **Claim 46** – By this paper, Applicant has amended Claim 46 to recite a software application adapted to be utilized by more than one application having permissions from an OCAP monitor and simultaneously running on the CPE. Support for this amendment may be found at, *inter alia*, page 25, lines 9-13 of Applicant's specification as filed.

20 Applicant respectfully submits that none of the references cited by the Examiner, including Patki and/or Curran, teach or suggest the aforementioned limitation. Specifically, Applicant notes that although Curran discloses utilization of the Chameleon middleware by the devices, nowhere does Curran disclose applications running on the devices having permissions from an OCAP monitor to utilize the middleware.

25 Since neither of the references cited by the Examiner whether taken alone or in combination teach or suggest the limitations of Claim 46 as amended, Claim 46 is not rendered unpatentable thereby.

Claim 50 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 50
30 as being unpatentable over Curran in view of Patki.

Specifically, Applicant notes that the Examiner has provided no citation to where either reference teaches or suggests developing at least one path to the media interface components, the path being accessible only to authorized entities. Applicant submits that neither reference teaches or suggests the aforementioned limitation. Stated simply, even if either reference
5 discloses a path to the media interface components (a point which Applicant does not necessarily concede), neither reference discloses an authorized entity, much less the path being accessible only to an authorized entity.

Therefore, Applicant submits that Claim 50 is not rendered unpatentable given the disclosures of the Curran and Patki references, whether taken alone or in combination.

10 2. Per page 6 of the Office Action, Claims 22-24 and 47-49 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Curran in view of Patki, and further in view of Logston, et al. (U.S. Patent No. 6,941,341; hereinafter referred to as "Logston"). In response thereto, Applicant provides the following remarks

15 Applicant respectfully submits that the Examiner's rejections of dependent Claims 22-24 and 47-49 are rendered moot, given the arguments and amendments discussed above with respect to independent Claims 21 and 46.

New Claims

20 By this paper, Applicant has added new Claims 61-64, as follows.

Claim 61 - New Claim 61 corresponds generally to the subject matter of previous Claim 37. Applicant further notes that Claim 61 recites (i) upstream and downstream communication between a CPE and a headend entity of an HFC network having at least one extension thereof,
25 (ii) a third module being adapted to understand the extension, and (iii) enabling the content to be presented utilizing one or more functional trick modes available to the network-specific protocol based at least in part on the extension. Applicant submits that none of the prior art cited by the Examiner, including Patki, Curran and/or Logston teaches or suggests the aforementioned limitations. Therefore, Applicant submits that new Claim 61 distinguishes over
30 the prior art and thus is in condition for allowance.

Claim 62 - New independent Claim 62 relates generally to the subject matter of existing Claim 37 and 50. This new claim is also supported extensively throughout the specification as filed; see, *inter alia*, page 19, line 31 through page 21, line 24. Hence, no new matter has been added.

New Claim 62 recites *inter alia*: (i) CPE comprising middleware utilizing a Java media framework (JMF) and at least one application configured to run thereon; (ii) extending the JMF to include data source and media handling functions that are specific to services offered by the operator of the network; (iii) the aforementioned extension comprising a prefix and being accomplished at least in part using at least one Java class file adapted for network-specific protocols associated with said services; (iv) the at least one class file being added to the at least one application at the CPE; and (v) the extension being persistent and accessible to other applications running on the CPE, regardless of whether the other applications set the prefix.

Applicant submits that no such limitations are taught or suggested by the cited art, and hence Claim 62 is in condition for allowance.

Claims 63-64 - New independent Claims 63-64 relate generally to the subject matter of existing Claim 46. These new claims are also supported extensively throughout the specification as filed; see, *inter alia*, page 19, line 31 through page 21, line 24. Hence, no new matter has been added.

New Claim 63 recites *inter alia*: (i) middleware utilizing a Java media framework (JMF); (ii) utilization of existing JMF media handling application programming interfaces (APIs) associated with the middleware to enable first network-specific protocols for handling a plurality of on-demand-related or pay-per-view (PPV)-related services within the CPE, the services being associated with a first content-based network; and (iii) the ability for a network operator associated with a second content-based network to add protocols specific to said second network to the CPE, such that services associated with the second network comparable to the on-demand-related or PPV-related services of the first network can operate on the CPE.

Applicant submits that no such limitations are taught or suggested by the cited art, and hence Claim 63 is in condition for allowance.

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New Claim 64 recites *inter alia*: (i) an application comprising an extension adding one or more network-specific protocols using at least one Java media framework (JMF) set-prefix method; (ii) the application comprising a permission to call a JMF commit-prefix method, the commit-prefix method making persistent a plurality of changes caused by the at least one JMF set-prefixes method; and (iii) the aforementioned persistence making the extension available to a plurality of other applications disposed on and capable of running on the CPE.

Applicant submits that no such limitations are taught or suggested by the cited art, and hence Claim 64 is in condition for allowance as well.

10 *Other Remarks*

Applicant hereby specifically reserves the right to prosecute claims of different scope in another continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

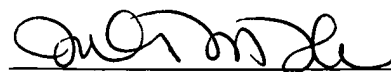
Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims. If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

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